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No. 1013

IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

BOBBY H. WORLEY and RICHARD R. ACKERSON,
Petitioners,

vs.

PEOPLE OF THE STATE OF ILLINOIS,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

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To: The Honorable Chief Justice and Associate Justices of the Supreme Court of the United States

Petitioners, Bobby H. Worley and Richard R. Ackerson, pray that a writ of certiorari be issued to review the decision of the Supreme Court of Illinois affirming the order of the Circuit Court of Ogle County, Illinois which denied petitioner's motion to vacate their pleas of guilty, which motions were made prior to their sentencing.

OPINION BELOW

The Opinion of the Supreme Court of Illinois is reported at ..... Ill. 2d ....., 221 N.E. 2d 267 and is appended to this petition as Appendix "A".

JURISDICTION OF THIS COURT

1. The date of judgment sought to be reviewed was entered by the Supreme Court of Illinois on November 14, 1966 (R. 11-12). This petition for a writ of certiorari is filed within 90 days from said order.

2. The jurisdiction of this court is invoked under Title 28, U.S. Code, Section 1257(3) and Rule 22(1) of the rules of this court.

QUESTION PRESENTED FOR REVIEW

Where petitioners enter their pleas of guilty to the charge of burglary after being advised of the nature of the charge and consequence of the plea, but where the pleas of guilty were induced by confessions obtained by impermissible methods under federal standards, and where their applications to the court were made to withdraw such pleas of guilty before sentence and within two weeks of the pleas of guilty, was it not an abuse of discretion to deny the withdrawal of the pleas and permit a jury trial on the issues?

STATEMENT OF THE CASE.

Petitioners, charged with the burglary of a tavern in Ogle County, Illinois, appeared in open court on October 5, 1965, and pled guilty to the charges. Each was represented by counsel of his choice and was admonished as to the consequences of his plea (A. 2, 9-10).[1] Before any sentence was imposed on petitioners, and within approximately two weeks after their guilty pleas were taken, they moved to vacate their pleas of guilty (A. 2, 10) on the grounds that their pleas of guilty were induced by confessions obtained by unconstitutional means.

The trial court held evidentiary hearings on the motions relative to the circumstances surrounding the taking of the confessions (A. 3-13), and denied the motions to withdraw the pleas.

EVIDENCE IN CONNECTION WITH THE TAKING OF THE CONFESSIONS

Ackerson testified, without contradiction, that upon arrest on September 28, 1965, he was taken to the County Jail that night, made no statements, and was questioned the next morning. He told the Sheriff he would like to post bail so he could go home with his wife; he was told by the Sheriff that if he would sign a confession, bail could be made (A. 3). Ackerson's wife testified that she visited her husband in the County Jail the day after his arrest and told him that "I thought he should have a lawyer before he signed anything." (A. 4). But Ackerson asked

[1] "A" refers to the printed abstract of record as filed in the Supreme Court of Illinois, which appears on page 6 of the certified record filed in this court.

the Sheriff, "If we do sign these papers, we'll be able to get out and be with our families?". To which the Sheriff replied, "Yes, that is right." (A. 4).

The Sheriff told Ackerson's father that if Ackerson were taken out on bond they would keep slapping on charges until his son signed a confession (A. 6).

After Ackerson signed a confession he was released on bond (A. 6).

Petitioner Worley testified he was arrested on September 28, 1965, interrogated that evening and said nothing. Around noon the next day, he heard Sheriff Spencer say that the only way they could get out on bond was to sign a confession (A. 5).

The State's Attorney of Ogle County, John Moore, testified that he told the Sheriff that petitioner Worley was not cooperative—that is, he had not signed a confession—and that he could see no sense in lowering the bond, although the Sheriff had stated it was all right to withdraw three other charges and allow a bond to stand on one charge (A. 13).

On their motions to withdraw their pleas of guilty, each of the defendants declared he was not guilty of the charges (A. 8, 14).

REASONS FOR GRANTING THE WRIT

As the Constitution favors a trial on the issues in a criminal case, and as the pleas of guilty were induced by confessions taken by constitutionally impermissible means, the trial court abused its discretion in refusing to permit a withdrawal of the pleas. This case raises only one important question: whether a plea of guilty may be withdrawn before sentence, where such plea was induced by a confession obtained by unconstitutional means.

The Supreme Court decided that the "defendants have not shown that the convictions were the result of coerced confessions or pleas of guilty caused by illegal or coercive conduct by law enforcement officers." *People* v. *Worley, et al.*, ... Ill.2d ....., 221 N.E. 2d 267 at 269.

Yet, the testimony and evidence is unrebutted that the Sheriff, holding the petitioners in custody on the second day of their arrest, advised petitioners in front of their relatives that they would not be released on bond until they signed confessions (A. 5, 6). They were not taken to any court for arraignment on the day following their arrest. They wanted to be with their families. And even though Mrs. Ackerson told her husband she thought he should have a lawyer before he signed anything, Ackerson asked Sheriff Spencer whether, if they signed confession papers, they would be able to get out and be with their families (A. 4).

Thus, the entire presentation at the hearing on the motions to withdraw the pleas of guilty related to the unconstitutionality of the means by which the confessions were taken. *Haynes* v. *State of Washington*, 373 U.S. 503, *Lynumm* v. *Illinois*, 372 U.S. 528, *Escobedo* v. *Illinois*, 378

U.S. 478, *Miranda* v. *Arizona*, 384 U.S. 436, *Johnson* v. *New Jersey*, 384 U.S. 719. The totality of circumstances surrounding the confessions demonstrate their unconstitutional character.

> "The right of an accused to trial by jury has a favored place in our law." *Kadwell* v. *United States*, 9 Cir., 315 F. 2d 667, 670.

Although Illinois has no rule of criminal procedure as is found in Rule 32(d), Federal Rules of Criminal Procedure, its decisional law states that where there is doubt of the guilt of the accused and the ends of justice would be better served by submitting the case to a trial, then pleas of guilty should be permitted to be withdrawn. *People* v. *King*, 1 Ill. 2d 296; *People* v. *Lang*, 402 Ill. 170. And before the adoption of the Federal Rules of Criminal Procedure, this court stated, "The court in exercise of its discretion will permit one accused to substitute a plea of not guilty and of a trial, if for any reason the granting of the privilege seems fair and just." *Kercheval* v. *United States*, 274 U.S. 220, 224. Leave to withdraw pleas of guilty before sentence "should be freely allowed." *Poole* v. *United States*, 250 F.2d 396, 400; *Gearhart* v. *United States*, 272 F.2d 499, 502.

It was apparently a consideration by the Illinois Supreme Court in affirming the conviction that the petitioners did not show that they had a valid defense, or that there was any doubt as to their guilt. 221 N.E. 2d 269. But each defendant asserted his innocence at the hearing on the motions to withdraw the pleas (A. 8 and 14). Ackerson was asked whether there was anything he would like to say before the court pronounced sentence and he replied, "I am not guilty." (A. 8). Petitioner Worley responded in the same manner (A. 14).

Accordingly, we submit the ends of justice would be better served by permitting a jury trial on factual issues where there is denial of guilt and where the motions to withdraw were made before there was any indication of what the sentence would be. No inconvenience would have been occasioned to the State. It was in no different position than it would have been two weeks prior had the defendants pled not guilty at their arraignment. As the Ninth Circuit stated, "Before sentencing, the inconvenience to court and prosecution resulting from a change of plea is ordinarily slight as compared with the public interest in protecting the right of the accused to trial by jury." *Kadwell* v. *United States*, 315 F.2d 667 at 670.

CONCLUSION.

For the foregoing reasons we pray that the petition be granted.

Respectfully submitted,

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